

118TH CONGRESS
1ST SESSION

S. 3488

To amend title 51, United States Code, to provide for a NASA public-private talent program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2023

Mr. BROWN (for himself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 51, United States Code, to provide for a NASA public-private talent program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NASA Talent Ex-
5 change Program Act”.

6 **SEC. 2. NASA PUBLIC-PRIVATE TALENT PROGRAM.**

7 Section 20113 of title 51, United States Code, is
8 amended by adding at the end the following new sub-
9 section:

10 “(n) PUBLIC-PRIVATE TALENT PROGRAM.—

1 “(1) ASSIGNMENT AUTHORITY.—Under policies
2 and procedures prescribed by the Administration,
3 the Administrator may, with the agreement of a pri-
4 vate sector entity and the consent of an employee of
5 the Administration or of such entity, arrange for the
6 temporary assignment of such employee of the Ad-
7 ministration to such private sector entity, or of such
8 employee of such entity to the Administration, as
9 the case may be.

10 “(2) AGREEMENTS.—

11 “(A) IN GENERAL.—The Administrator
12 shall provide for a written agreement among
13 the Administration, the private sector entity,
14 and the employee concerned regarding the
15 terms and conditions of the employee’s assign-
16 ment under this subsection. The agreement
17 shall—

18 “(i) require that the employee of the
19 Administration, upon completion of the as-
20 signment, will serve in the Administration,
21 or elsewhere in the civil service if approved
22 by the Administrator, for a period equal to
23 twice the length of the assignment;

24 “(ii) provide that if the employee of
25 the Administration or of the private sector

1 entity (as the case may be) fails to carry
2 out the agreement, such employee shall be
3 liable to the United States for payment of
4 all expenses of the assignment, unless such
5 failure was for good and sufficient reason,
6 as determined by the Administrator; and

7 “(iii) contain language ensuring that
8 such employee of the Administration or of
9 the private sector entity (as the case may
10 be) does not improperly use predecisional
11 or draft deliberative information that such
12 employee may be privy to or aware of re-
13 lated to Administration programing, budg-
14 eting, resourcing, acquisition, or procure-
15 ment for the benefit or advantage of the
16 private sector entity.

17 “(B) TREATMENT.—An amount for which
18 an employee is liable under subparagraph (A)
19 shall be treated as a debt due the United
20 States.

21 “(C) WAIVER.—The Administrator may
22 waive, in whole or in part, collection of a debt
23 described in subparagraph (B) based on a de-
24 termination that the collection would be against
25 equity and good conscience and not in the best

1 interests of the United States, after taking into
2 account any indication of fraud, misrepresenta-
3 tion, fault, or lack of good faith on the part of
4 the employee concerned.

5 “(3) TERMINATION.—An assignment under this
6 section may, at any time and for any reason, be ter-
7 minated by the Administration or the private-sector
8 entity concerned, as the case may be.

9 “(4) DURATION.—

10 “(A) IN GENERAL.—An assignment under
11 this subsection shall be for a period of not less
12 than three months and not more than two
13 years, renewable up to a total of three years.
14 An employee of the Administration may not be
15 assigned under this subsection for more than a
16 total of three years inclusive of all such assign-
17 ments.

18 “(B) EXTENSION.—An assignment under
19 this subsection may be for a period in excess of
20 two years, but not more than three years, if the
21 Administrator determines that such assignment
22 is necessary to meet critical mission or program
23 requirements.

24 “(5) POLICIES AND PROCEDURES.—

1 “(A) IN GENERAL.—The Administrator
2 shall establish policies and procedures relating
3 to assignments under this subsection.

4 “(B) ELEMENTS.—Policies and procedures
5 established pursuant to subparagraph (A) shall
6 address the following:

7 “(i) The nature and elements of writ-
8 ten agreements with participants in assign-
9 ments under this subsection.

10 “(ii) Criteria for making such assign-
11 ments, including the needs of the Adminis-
12 tration relating thereto.

13 “(iii) How the Administration will
14 oversee such assignments, in particular
15 with respect to paragraphs (2)(A)(iii),
16 (7)(C), and (7)(D).

17 “(iv) Criteria for issuing waivers.

18 “(v) How expenses under paragraph
19 (2)(A)(ii) would be determined.

20 “(vi) Guidance for participants in
21 such assignments.

22 “(vii) Mission Directorate, Office, and
23 organizational structure to implement and
24 manage such assignments.

1 “(viii) Any other necessary policies,
2 procedures, or guidelines to ensure such
3 assignments comply with all relevant statu-
4 tory authorities and ethics rules, and effec-
5 tively contribute to one or more of the Ad-
6 ministration’s missions.

7 “(C) INHERENTLY GOVERNMENTAL AC-
8 TIVITIES.—Assignments made under this sub-
9 section shall not have responsibilities or per-
10 form duties or decision making regarding Ad-
11 ministration activities that are inherently gov-
12 ernmental, pursuant to subpart 7.500 of title
13 48, Code of Federal Regulations, and Office of
14 Management and Budget review.

15 “(6) STATUS OF FEDERAL EMPLOYEES AS-
16 SIGNED TO PRIVATE SECTOR ENTITIES.—

17 “(A) IN GENERAL.—An employee of the
18 Administration who is assigned to a private sec-
19 tor entity under this subsection shall be consid-
20 ered, during the period of such assignment, to
21 be on detail to a regular work assignment in
22 the Administration for all purposes. The written
23 agreement established under paragraph (2)(A)
24 shall address the specific terms and conditions

1 related to such employee's continued status as
2 a Federal employee.

3 “(B) CERTIFICATION.—In establishing a
4 temporary assignment of an employee of the
5 Administration to a private sector entity, the
6 Administrator shall certify that such temporary
7 assignment shall not have an adverse or nega-
8 tive impact on the mission of the Administra-
9 tion or organizational capabilities associated
10 with such assignment.

11 “(7) TERMS AND CONDITIONS FOR PRIVATE
12 SECTOR EMPLOYEES.—An employee of a private sec-
13 tor entity who is assigned to the Administration
14 under this subsection—

15 “(A) shall continue to receive pay and ben-
16 efits from the private sector entity from which
17 such employee is assigned and shall not receive
18 pay or benefits from the Administration, except
19 as provided in subparagraph (B);

20 “(B) is deemed to be an employee of the
21 Administration for the purposes of—

22 “(i) chapters 73 and 81 of title 5;

23 “(ii) sections 201, 203, 205, 207,
24 208, 209, 603, 606, 607, 643, 654, 1905,
25 and 1913 of title 18, except that such sec-

1 tion 209 does not apply to any salary, or
2 contribution or supplementation of salary
3 made pursuant to subparagraph (A) of this
4 paragraph;

5 “(iii) sections 1343, 1344, and
6 1349(b) of title 31;

7 “(iv) the Federal Tort Claims Act and
8 any other Federal tort liability statute;

9 “(v) the Ethics in Government Act of
10 1978; and

11 “(vi) chapter 21 of title 41;

12 “(C) shall not have access to any trade se-
13 crets or any other nonpublic information which
14 is of commercial value to the private sector en-
15 tity from which such employee is assigned;

16 “(D) may not perform work that is consid-
17 ered inherently governmental in nature, in ac-
18 cordance with paragraph (5)(C); and

19 “(E) may not be used to circumvent—

20 “(i) section 1710 of title 41, United
21 States Code; or

22 “(ii) any limitation or restriction on
23 the size of the Administration’s civil serv-
24 ant workforce.

1 “(8) ADDITIONAL REQUIREMENTS.—The Ad-
2 ministrators shall ensure that—

3 “(A) the normal duties and functions of an
4 employee of the Administration who is assigned
5 to a private sector entity under this subsection
6 can be reasonably performed by other employ-
7 ees of the Administration without the perma-
8 nent transfer or reassignment of other per-
9 sonnel of the Administration;

10 “(B) normal duties and functions of such
11 other employees of the Administration are not,
12 as a result of and during the course of such
13 temporary assignment, performed or augmented
14 by contractor personnel in violation of section
15 1710 of title 41; and

16 “(C) not more than two percent of the Ad-
17 ministration’s civil servant workforce may par-
18 ticipate in an assignment under this subsection
19 at the same time.

20 “(9) CONFLICTS OF INTEREST.—The Adminis-
21 trator shall implement a system to identify, mitigate,
22 and manage any conflicts of interests that may arise
23 as a result of an employee’s assignment under this
24 subsection.

1 “(10) PROHIBITION AGAINST CHARGING CER-
2 TAIN COSTS TO THE FEDERAL GOVERNMENT.—A
3 private-sector entity may not charge the Administra-
4 tion or any other agency of the Federal Government,
5 as direct or indirect costs under a Federal contract,
6 the costs of pay or benefits paid by the entity to an
7 employee assigned to the Administration under this
8 subsection for the period of the assignment con-
9 cerned.

10 “(11) CONSIDERATIONS.—In carrying out this
11 subsection, the Administrator shall take into consid-
12 eration—

13 “(A) the question of how assignments
14 under this subsection might best be used to
15 help meet the needs of the Administration with
16 respect to the training of employees; and

17 “(B) where applicable, areas of particular
18 private sector expertise, such as cybersecurity.

19 “(12) NASA REPORTING.—

20 “(A) IN GENERAL.—Not later than April
21 30 of each year, the Administrator shall submit
22 to the Committee on Science, Space, and Tech-
23 nology of the House of Representatives and the
24 Committee on Commerce, Science, and Trans-

1 portation of the Senate a report summarizing
2 the implementation of this subsection.

3 “(B) CONTENTS.—Each report under sub-
4 paragraph (A) shall include, with respect to the
5 annual period to which such report relates, the
6 following:

7 “(i) Information relating to the total
8 number of employees of private sector enti-
9 ties assigned to the Administration, and
10 the total number of employees of the Ad-
11 ministration assigned to private sector en-
12 tities.

13 “(ii) A brief description and assess-
14 ment of the talent management benefits
15 evidenced from such assignments, as well
16 as any identified strategic human capital
17 and operational challenges, including the
18 following:

19 “(I) An identification of the
20 names of the private sector entities to
21 and from which employees were as-
22 signed.

23 “(II) A complete listing of posi-
24 tions such employees were assigned to
25 and from.

1 “(III) An identification of as-
2 signed roles and objectives of such as-
3 signments.

4 “(IV) Information relating to the
5 durations of such assignments.

6 “(V) Information relating to as-
7 sociated pay grades and levels.

8 “(iii) An assessment of impacts of
9 such assignments on the Administration
10 workforce and workforce culture.

11 “(iv) An identification of the number
12 of Administration staff and budgetary re-
13 sources required to implement this sub-
14 section.

15 “(13) FEDERAL ETHICS.—Nothing in this sub-
16 section shall affect existing Federal ethics rules ap-
17 plicable to Federal personnel.

18 “(14) GAO REPORTING.—

19 “(A) IN GENERAL.—Not later than three
20 years after the date of the enactment of this
21 subsection, the Comptroller General of the
22 United States shall submit to the Committee on
23 Science, Space, and Technology of the House of
24 Representatives and the Committee on Com-
25 merce, Science, and Transportation of the Sen-

1 ate a report summarizing the implementation of
2 this subsection.

3 “(B) CONTENTS.—The report under sub-
4 paragraph (A) shall include the following:

5 “(i) A review of the implementation of
6 this subsection, according to law and the
7 Administration policies and procedures es-
8 tablished for assignments under this sub-
9 section.

10 “(ii) Information relating to the ex-
11 tent to which such assignments adhere to
12 best practices relating to public-private tal-
13 ent exchange programs.

14 “(iii) A determination as to whether
15 there should be limitations on the number
16 of individuals participating in such assign-
17 ments.

18 “(iv) Information relating to the ex-
19 tent to which the Administration complies
20 with statutory requirements and ethics
21 rules, and appropriately handles potential
22 conflicts of interest and access to non-
23 public information with respect to such as-
24 signments.

1 “(v) Information relating to the extent
2 to which such assignments effectively con-
3 tribute to one or more of the Administra-
4 tion’s missions.

5 “(vi) Information relating to Adminis-
6 tration resources, including employee time,
7 dedicated to administering such assign-
8 ments, and whether such resources are suf-
9 ficient for such administration.”.

○